

COMMITTEE ON LEGISLATIVE RESEARCH
OVERSIGHT DIVISION

FISCAL NOTE

L.R. NO. 0162-01
BILL NO. HB 107
SUBJECT: Civil Procedure; Liability; Courts
TYPE: Original
DATE: February 12, 2001

FISCAL SUMMARY

ESTIMATED NET EFFECT ON STATE FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Legal Services for Low-Income People Fund	Unknown	Unknown	Unknown
Tort Victims' Compensation Fund	(\$257,598 to Unknown)	(\$268,886 to Unknown)	(\$275,693 to Unknown)
Total Estimated Net Effect on <u>All</u> State Funds	(\$257,598)	(\$268,886)	(\$275,693)

ESTIMATED NET EFFECT ON FEDERAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
None	\$0	\$0	\$0
Total Estimated Net Effect on <u>All</u> Federal Funds	\$0	\$0	\$0

ESTIMATED NET EFFECT ON LOCAL FUNDS			
FUND AFFECTED	FY 2002	FY 2003	FY 2004
Local Government	\$0	\$0	\$0

Numbers within parentheses: () indicate costs or losses
This fiscal note contains 6 pages.

FISCAL ANALYSIS

ASSUMPTION

Officials from the **Department of Social Services, Office of State Public Defender, Department of Natural Resources, Department of Transportation, Office of Administration - Division of Accounting** and the **Office of Administration - Division of General Services** assume the proposed legislation would have no fiscal impact on their agencies.

In response to a similar proposal from this session (SB 39), officials from the **Office of State Courts Administrator** and the **Office of State Treasurer** assume the proposed legislation would have no fiscal impact on their agencies.

Officials from the **Office of Prosecution Services (OPS)** assume the cost of this proposal is unknown, but is assumed to be less than \$100,000. **Oversight** notes that in response to similar proposals, the OPS assumed that the proposed legislation would have no fiscal impact on their agency. Therefore, Oversight assumes no fiscal impact.

Officials from the **Office of Administration - Division of Budget and Planning** assume the proposed legislation would have no fiscal impact on their agency. Officials noted that there could be impact on total state revenue.

Officials from the **Department of Revenue** assume the proposed legislation would have little or no administrative impact on their agency.

Officials from the **Office of Secretary of State** assume this proposal creates a lien of 50% of certain punitive damages for the tort victims' compensation fund and the Legal Services for Low-Income People Fund which requires the Division of Workers' Compensation to promulgate rules to implement the proposal. Based on experience with other divisions, the rules, regulations and forms issued by the Division of Workers' Compensation could require as many as approximately 24 pages in the *Code of State Regulations*. For any given rule, roughly half again as many pages are published in the *Missouri Register* as in the *Code* because cost statements, fiscal notes and the like are not repeated in *Code*. These costs are estimated. The estimated cost of a page in the *Missouri Register* is \$23.00. The estimated cost of a page in the *Code of State Regulations* is \$27.00. Therefore, the estimated costs for FY 02 are \$1,476. The actual costs could be more or less than the numbers given. The impact of this legislation in future years is unknown and depends upon the frequency and length of rules filed, amended, rescinded and withdrawn.

ASSUMPTION (continued)

Officials from the **Office of Attorney General** noted that they do not know the number of claims that will be appealed to the LIRC and therefore, they do not know how many cases they will defend. Additionally, officials from the AGO do not know how many cases they might bring in subrogation. Officials assume that this number will be minimal and that costs can be absorbed.

Officials from the **Department of Labor and Industrial Relations - Division of Workers' Compensation** (DOL) assume the proposed legislation establishes responsibility in the Division of Workers' Compensation to administer and adjudicate claims of uncompensated tort victims against the Tort Victims' Compensation Fund.

The DOL will establish and maintain a Tort Victims' Compensation Unit to receive, process and make awards for uncompensated tort victims. The DOL will also establish and maintain a procedure to adjudicate these claims.

The impact of this program is very difficult to assess. In FY 98, the Office of the State Courts Administrator reported that 20,282 tort cases were disposed of. Over the last three fiscal years the average number of tort cases disposed of is 19,264 cases. This includes settlements, dismissals, defendants' verdicts, plaintiffs' verdicts, and default judgments. It is impossible to determine how many cases will result in a verdict for the plaintiff that are uncollectible. This type of data is not collected. It is also impossible to determine how many uninsured motorist claims will be filed as tort cases because of accessibility to these funds. Attempts to obtain this type of information were made with the Missouri Association of Trial Attorneys and the Missouri Department of Insurance, respectively concerning SB 464 in the 1999 legislative session.

Funding for this program on an ongoing basis is questionable. The statute provides for 65% of punitive damages awards in final judgments to be paid to the Division into the Tort Victims' Compensation Fund. Currently, there are moneys over seven million dollars (\$7,000,000) in the Fund. This funding came from two unusual cases in Kansas City where the plaintiffs and defendants absolutely refused to settle the claim. This information is from the Attorney General's Office. In most cases, the plaintiff and defendant settle any punitive damages, even after a jury award. This usually happens while the case is on appeal. Because the case is settled, there would be no final judgment and no payment to the Fund.

Since almost all cases involving tort claims involve claimant attorneys, it is assumed the potential for claims in cases of unsatisfied plaintiffs' judgements will be very high. For the purpose of this fiscal note, the DOL assumes 10% of all cases disposed of will result in claims against the fund. Based on information previously cited, this is an average of 1,926 claims filed
ASSUMPTION (continued)

per year (19,264 x 10%). This average is very close to the number of claims filed with the DOL's

Crime Victims' Compensation program each year. In FY 96 a total of 1,652 claims were disposed of, in FY 97 a total of 2,206 claims were disposed of, in FY 98 a total of 1,688 claims were disposed of by the Crime Victims' Compensation program.

The DOL assumes the parameters of the Tort Victims' Compensation program in verifying medical, funeral and legal bills, verifying court action and other requirements to establish the validity of a claim under this proposal are also very similar to the manner in which crime victim's compensation claims are handled. For that reason, DOL assumed staffing needs similar to the Crime Victims' Compensation program would be needed to handle the claims process. This includes one Program Manager, one Clerk Typist IV and three Clerk Typist III's. To ensure proper funding, this program must also employ one Legal Counsel to ensure compliance with the statutory provisions and the myriad of legal issues involved in tort claims to ensure proper funding.

In reference to expense and equipment requests of the DOL, **Oversight** has eliminated the rent expense, assuming these employees could be located in existing space; eliminated the office equipment associated with locating these employees separately from other DOL employees; and reduced the estimated cost of PC printers.

Oversight assumes 35% of all payments received by the Tort Victims' Compensation Fund will be transferred to the Legal Services for Low-Income People Fund which is created in this proposal; therefore, Oversight has reflected unknown income to the Legal Services for Low-Income People Fund and an unknown loss to the Tort Victims' Compensation Fund.

Oversight assumes the SOS could absorb the costs of printing and distributing regulations related to this proposal. If multiple bills pass which require the printing and distribution of regulations at substantial costs, the SOS could request funding through the appropriation process. Any decisions to raise fees to defray costs would likely be made in subsequent fiscal years.

<u>FISCAL IMPACT - State Government</u>	FY 2002	FY 2003	FY 2004
	(10 Mo.)		

LEGAL SERVICES FOR LOW-INCOME PEOPLE FUND

Income - Punitive damage awards

Transfer from Tort Victims'

Compensation Fund

FISCAL IMPACT - State Government

<u>Unknown</u>	<u>Unknown</u>	<u>Unknown</u>
FY 2002	FY 2003	FY 2004
(10 Mo.)		

TORT VICTIMS' COMPENSATION FUND

Loss - Punitive damage awards

Transfer to Legal Services for Low-Income People Fund	(Unknown)	(Unknown)	(Unknown)
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Cost - Labor and Industrial Relations

Personal Service (6 FTE)	(\$157,325)	(\$193,511)	(\$198,348)
Fringe Benefits	(52,436)	(64,497)	(66,109)
Equipment and Expense	(47,837)	(10,878)	(11,236)
Total costs - DOL	(\$257,598)	(\$268,886)	(\$275,693)

**ESTIMATED NET EFFECT ON
 TORT VICTIMS' COMPENSATION
 FUND**

<u>(\$257,598 to</u>	<u>(\$268,886 to</u>	<u>(\$275,693 to</u>
<u>Unknown)</u>	<u>Unknown)</u>	<u>Unknown)</u>

FISCAL IMPACT - Local Government

FY 2002 (10 Mo.)	FY 2003	FY 2004
\$0	\$0	\$0

FISCAL IMPACT - Small Business

No direct fiscal impact on small businesses would be expected due to this proposal.

DESCRIPTION

This proposal creates the Legal Services for Low-Income People Fund which receives 35% of all payments to the Tort Victims' Compensation Fund. The State Treasurer is authorized to distribute money from the Legal Services for Low-Income People Fund to legal services organizations in Missouri that receive federal Legal Services Corporation funding. Funds must be allocated according to the most recent official census data relating to the location of Missouri residents living at or below the poverty level.

DESCRIPTION (continued)

In addition, the proposal authorizes the Division of Workers' Compensation to make awards to uncompensated victims from 65% of payments to the fund. Prevailing plaintiffs in a personal injury or wrongful death case who have received a final monetary judgement against a tortfeasor,

but are unable to collect or enforce judgments are considered uncompensated tort victims under the proposal's provisions. Awards are subject to certain limitations, including no award from the fund may exceed \$300,000. The proposal specifies procedures for filing claims and appealing determinations. If there are insufficient funds for the division to pay all claims, the claims must be paid on a pro rata basis.

The proposal also modifies procedures for the Attorney General to collect 50% of all punitive damage awards. Cases resolved by arbitration, mediation, or compromise settlement as well as attorneys' fees and expenses are not subject to the collection procedures.

This legislation is not federally mandated, would not duplicate any other program, and would not require additional capital improvements or rental space.

SOURCES OF INFORMATION

Department of Labor and Industrial Relations - Division of Workers' Compensation
Department of Natural Resources
Department of Revenue
Department of Social Services
Department of Transportation
Office of Administration - Division of Accounting
Office of Administration - Division of Budget and Planning
Office of Administration - Division of General Services
Office of Attorney General
Office of Prosecution Services
Office of Secretary of State
Office of State Courts Administrator
Office of State Public Defender
Office of State Treasurer



Jeanne Jarrett, CPA
Director

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